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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR      | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|---------------------------|---------------------|------------------|
| 10/552,739   | 10/12/2005  | Christopher Joseph Kernot | P70885US0           | 4461             |
| 136  | 7590        | 02/11/2009                | EXAMINER            |                  |
| JACOBSON HOLMAN PLLC<br>400 SEVENTH STREET N.W.<br>SUITE 600<br>WASHINGTON, DC 20004 |             |                           | DOAN, ROBYN KIEU    |                  |
|  |             | ART UNIT                  | PAPER NUMBER        |                  |
|  |             | 3732                      |                     |                  |
|  |             | MAIL DATE                 |                     | DELIVERY MODE    |
|  |             | 02/11/2009                |                     | PAPER            |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                               |  |
|------------------------------|------------------------|-------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>           |  |
|                              | 10/552,739             | KERNOT, CHRISTOPHER<br>JOSEPH |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>               |  |
|                              | Robyn Doan             | 3732                          |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 10 November 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-33 is/are pending in the application.  
 4a) Of the above claim(s) 21-33 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-11 and 13-20 is/are rejected.  
 7) Claim(s) 12 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 12 October 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/19/07</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Election/Restrictions***

Claim 21-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/10/08.

Applicant's election without traverse of claims 1-20 in the reply filed on 11/10/08 is acknowledged.

### ***Claim Objections***

Claims 1, 9, 15 are objected to because of the following informalities: claim 1, line 7, "said wall portion" should be changed to --said wall portions--; also line 10 "said bearing portions" should be changed to --said bearing portion--. Appropriate correction is required.

Claim 9 "wall portion" in lines 2 and 3 should be changed to "wall portions"; also in claim 15.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 8, 9, 13, 14, 17, 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McConnell (IDS cited reference US Pat. # 6,302,121) in view of Sherman et al (US Design Pat. # 326,339).

McConnel discloses a dispenser (figs. 4-13) comprising a closed housing (10) having a pair of oppositely planar wall portions (18, 20) being substantially parallel wherein the wall portion being connected together by a living hinge (26), a dispensing area (42), a reel (74) of filamentary material being within the housing; a moveable cover (22) connected with the housing and being hinged to at least one wall portion the cover being moveable between first and second conditions; the dispensing area comprising a dispensing aperture (42) and a cutter (38); the wall portions further having step portions or snap locks fasteners (46) for sealing around a perimeter of the wall portions; the housing including at least one guide (42) to direct the filamentary material wherein the guide having a plurality of barbs (52, fig. 9). McConnel fails to show the wall portions being spaced apart by less than 6mm and having a circular aperture receiving a bearing portion of the reel. Sherman et al discloses a floss dispenser (fig. 10) comprising a front wall with a circular aperture. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the aperture as taught by Sherman el al into the dispenser of McConnel in order to view the floss spool. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the wall portions being spaced apart by less than 6mm, since such a modification would have involved a mere change in the size of the component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

Claims 6, 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over McConnel in view of Sherman et al as applied to claims 5 and 2 above, and further in view of Waterman (USP 2,692,698).

McConnel in view of Sherman et al discloses the essential claimed invention except for the cover is slidable between first and second condition, wherein the cover includes one or more surface features to improve grip. Waterman discloses a dispenser (figs. 1, 2) comprising a cover (18) being slidable between first and second condition (see fig. 2), the cover includes one or more surface features (19). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the slidable mechanism and the gripping surfaces of the cover as taught by Waterman into the device of McConnel in view of Sherman et al in order to provide a better gripping surface and to serve as an alternative way of covering the dispenser.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over McConnel in view of Sherman et al as applied to claim 1 above, and further in view of Cheng (USP 5,199,452).

McConnel in view of Sherman et al discloses the essential claimed invention except for the reel having indicia on an outer surface. Cheng discloses a floss reel with indicia (col. 4, lines 39-45). It would have bee obvious to one having an ordinary skill in the art at the time the invention was made to employ the indicia as taught by Cheng into the reel of McConnel in view of Sherman et al in order to provide to the user information about the product.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over McConnel in view of Sherman et al as applied to claim 2 above, and further in view of Kossak et al (USP 5,678,578).

McConnel in view of Sherman et al discloses the essential claimed invention except for a rotating limiting means having a ratchet track with teeth with ramp leading surfaces for preventing rotation of the reel in a wind up direction. Kossa et al discloses a flosser (fig. 10) comprising a rotating limiting means (275) having a ratchet track with teeth (277) and at least one complementary shaped ratchet tooth of the reel (284); the track teeth and the ratchet tooth arranged in a meshing relationship and allowing rotation of the reel. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the rotating limiting means as taught by Kossak et al into the device of McConnel in view of Sherman et al in order to prevent the rotation of the reel in a wind up direction.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over McConnel in view of Sherman as applied to claim 2 above, and further in view of Blasi et al (US Design Pat. # 485,945).

McConnel in view of Sherman et al discloses the essential claimed invention except for one of the wall portions having an aperture. Blasi et al discloses a floss dispenser (fig. 7) comprising a wall portion having an aperture for receiving an attachment such as a key ring. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the aperture as taught by

Blasi et al into the device of McConnel in view of Sherman et al in order to conveniently provide a way to hold an attachment means.

***Allowable Subject Matter***

Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tarrson et al and Davis are cited to show the state of the art with respect to a device for dispensing a filamentary material.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/  
Primary Examiner, Art Unit 3732